IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 28TH MARCH 2007 / 7TH CHAITHRA 1929

Crl.Rev.Pet.No. 549 of 2000()

CRA.300/1996 of V ADDL.SESSIONS COURT, ERNAKULAM
CC.143/1995 of JUDL.MAGISTRATE OF FIRST CLASS, KOLENCHERRY
.....

REVN. PETITIONER:

VARGHESE, S/O. PAILY,
KANJIRATHUMOOTTIL VEEDU
VALAYANCHIRANGARA KARA
RAYAMANGALAM VILLAGE.

BY ADV. SMT.AYSHA YOUSEFF
SRI.T.K.MOHAMMED SHARAFUDHEERN

RESPONDENTS:

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA
ERNAKULAM.

BY PUBLIC PROSECUTOR MR. AMJAD ALI
SRI.SIRAJ KAROLY

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 28/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL.M.P.NO. 2459 OF 2001 IN CRL.R.P.NO.549/2000-A

DISMISSED.

28-3-2007 **SD/-K.R.UDAYABHANU, JUDGE**

TRUE COPY

P.S.TO JUDGE

K.R. UDAYABHANU, J.

CRL.R.P.NO.549 of 2000-A

DATED THIS THE 28TH DYA OF MARCH 2007

ORDER

The revision petitioner stands convicted for the offence under Section 411 I.P.C. and sentenced to undergo rigorous imprisonment for one year. The prosecution case is that the revision petitioner, originally accused No.4, received stolen property with knowledge that the same is stolen. The stolen articles were recovered as per confession statement under Section 27 of the Evidence Act from the hole in the wall of his house. PW7 is the attestor of recovery mahazar. The contention of the revision petitioner is that the police officers were annoyed on account of the fact that A4/ revision petitioner had filed complaint before the Judicial First Class Magistrate, Kolencherry alleging illegal detention of his son, who was the first accused, and also on account of the fact that the wife of the revision petitioner had filed a habeas corpus petition before the High Court. The High Court ordered a magisterial enquiry into the alleged illegal detention of the first accused as well as that of the revision petitioner. It is the contention that it is after the revision petitioner filed complaint before the Magistrate, the recoveries were made. It is also pointed out that PW7 the witness to recovery is an interested

witness as one of the thefts alleged has taken place in the house of his brother. PW7 has admitted the same in the cross examination. It is the case of the revision petitioner that he has been made an accused only on account of the ill-will of the police officials, on account of his filing complaint before the Judicial First Class Magistrate and also on account of the habeas corpus petition filed by his wife. The above facts, i.e. the filing of the complaint before the Judicial First Class Magistrate and the filing of the habeas corpus petition has been admitted by the investigating officer in cross examination. Further the confession statement is also not seen properly marked. The evidence of the independent witnesses being interested cannot be relied as such. The above circumstances render the recovery suspicious. Hence, I find that the accused is entitled to the benefit of doubt. The revision petition is allowed. A4/the revision petitioner is acquitted. The Crl.revision petition is allowed.

K.R.UDAYABHANU, JUDGE

ks.

K.R.UDAYABHANU, J

CRL.R.P.NO.549 of 2000-A

ORDER

28-3-2007